


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	)	CERTIFICATE OF MAILING
KAI K.O. BAR, ET AL.)	
Serial No.: 09/937,995	)	I hereby certify that this paper and the
Title: INFRARED IRRADIATION	)	documents referred to as enclosed therewith
Filed: September 28, 2001	)	are being deposited with the United States
Based on: PCT/EP00/02773 filed March	)	Postal Service as first class mail, postage
29, 2000 and DE 19915059.1 filed April	)	prepaid, on January 7, 2003 in an envelope
1, 1999	)	addressed to Commissioner for Patents, Box
Group Art Unit: Not Yet Assigned	)	PCT, Washington, D.C. 20231, Attention:
Examiner: Not Yet Assigned	)	PCT Legal Office.
)	
)	
	)	Roger A. Heppermann
	)	Registration No.: 37,641

**RENEWED PETITION FOR WITHDRAWAL OF ABANDONMENT UNDER 1.181
(AND/OR 37 C.F.R. §1.8(b) OR, IN THE ALTERNATIVE, A PETITION TO REVIVE
AN UNINTENTIONALLY ABANDONED APPLICATION UNDER 37 C.F.R.
§1.137(b))**

Commissioner for Patents
Box PCT
Washington, D.C. 20231

Attention: PCT Legal Office

Sir:

This paper is in response to the Decision under 37 C.F.R. 1.181, dated December 2, 2002. Applicants respectfully request withdrawal of the Notice of Abandonment dated August 28, 2002, issued with respect to the above-identified application, pursuant to 37 C.F.R. §1.8(b) or, in the alternative, petition to revive the above-identified application as being unintentionally abandoned pursuant to 37 C.F.R. §1.137(b).

**REQUEST FOR WITHDRAWAL OF NOTICE OF ABANDONMENT
PURSUANT TO 37 C.F.R. 1.8(b)**

A Notice of Missing Requirements under 35 U.S.C. 371 (the Notice) was mailed by the United States Patent and Trademark Office (USPTO) on November 8, 2001 establishing a

two-month response deadline of January 8, 2002. A Response to the Notice, dated December 20, 2001 (the "Response") was timely filed by applicants by being deposited with the United States Postal Service (USPS) on December 20, 2001 in accordance with 37 C.F.R. §1.8(a). Apparently, the Response was not received by the USPTO.

According to 37 C.F.R. §1.8(b), correspondence mailed in accordance with 37 C.F.R. §1.8(a), but not received in the USPTO, will be considered timely filed if the conditions set forth in 37 C.F.R. §§1.8(b)(1)-(3) are satisfied.

Pursuant to 37 C.F.R. §1.8(b)(1), applicants are hereby informing the USPTO that the Response for the above-identified application was timely submitted under 37 C.F.R. §1.8(a) on December 20, 2001.

Moreover, the undersigned respectfully submits that the USPTO was promptly informed of the previous mailing of the Response via Applicants' "Duplicate Copy of Executed Declaration," (attached as Exhibit A) mailed on August 26, 2002. Thus, the "Duplicate Copy of Executed Declaration" was mailed prior to the mailing date of the Notice of Abandonment.

As background, it is Marshall, Gerstein & Borun's standard practice to prepare and send a return receipt postcard with all papers filed with the USPTO. In mid to late August, 2002, the undersigned performed a routine review of our file corresponding to the above-identified application. This routine review was performed because it was noted that the Response was filed near a time when anthrax-related decontamination activities were causing problems with mail delivery in the Washington, D.C. area. During this review, the undersigned became aware that a return receipt post card for the Response had apparently not been received by our firm. Hence, the undersigned promptly filed a duplicate copy of the Response, pursuant to special procedures set forth by the USPTO: *Processing of, and Requirements for, the Filing of Duplicate Applications and Papers in Patent Applications in view of USPS Mail Delays*, 1254 Official Gazette U.S. Pat. & Trademark Off. 92 (January 15, 2002).

Pursuant to 37 C.F.R. §1.8(b)(2), applicants provide a copy of the previously mailed Response herewith, included in Exhibit A. Moreover, the undersigned respectfully submits that a copy of the previously mailed Response, along with a check in the amount of \$130.00,

was previously provided to the USPTO via Applicants' "Duplicate Copy of Executed Declaration," (Exhibit A) mailed on August 26, 2002.

Additionally, pursuant to 37 C.F.R. §1.8(b)(3), a statement is provided below that attests to the previous timely mailing of the Response.

STATEMENT PURSUANT TO 37 C.F.R. §1.8(b)(3)

(1) In the above-identified application, applicants mailed a Response to the Notification of Missing Requirements on December 20, 2001 (the "Response") pursuant to 37 C.F.R. §1.8(a). In particular, the Response was timely deposited with the USPS in an envelope addressed to the Commissioner for Patents including a Certificate of Mailing signed by Nate F. Scarpelli, the attorney responsible for the case at the time, stating that the date of deposit was December 20, 2001. A copy of this Response is included herewith in Exhibit A.

(2) The undersigned believes that the Response was, in fact, placed in the USPS on December 20, 2001 because a copy of the Response, with the signed Certificate of Mailing indicating it was deposited with the USPS on December 20, 2001, was included in our file corresponding to the above-identified application.

(3) The undersigned further believes that the Response was, in fact, placed in the USPS on December 20, 2001 based on a copy of a letter, in our file, to Dr. Johannes Bohnenberger of Meissner, Bolte & Partner, Germany, signed by Nate F. Scarpelli, and dated December 20, 2001, that reports to Dr. Bohnenberger that the Response was filed on December 20, 2001. A copy of this letter is attached hereto as Exhibit B.

(3) The undersigned further believes that the Response was, in fact, placed in the USPS on December 20, 2001 based on computerized docketing records at Marshall, Gerstein & Borun, which keeps a database of all correspondence sent to and received from the USPTO for each application. A copy of the computerized docketing record for application file 27428/37727 (U.S. Patent Application number 09/937,995), is attached hereto as Exhibit C, which illustrates that the above discussed Response was forwarded to the USPTO on December 20, 2001 with a Certificate of Mailing. In particular, on page two of the computerized docketing record, row "008" indicates that an executed declaration was mailed to the USPTO on December 20, 2001 (the "Reply Date").

(4) Additionally, the undersigned further believes that the Response was, in fact, placed in the USPS on December 20, 2001 based on written docketing records at Marshall, Gerstein & Borun, which keeps written records of all correspondence sent to the USPTO on a day-by-day basis. A photocopy of a portion of the daily written record for December 20, 2001 is attached hereto as Exhibit D, which illustrates that the response for attorney docket number 27428/37727 was mailed to the USPTO on that date with a Certificate of Mailing. In particular, row "3" indicates that the declaration and a check for \$130.00 was mailed on December 20, 2001 for Application No. 09/937,995.

**ALTERNATIVE PETITION TO REVIVE AN UNINTENTIONALLY ABANDONED
APPLICATION UNDER 37 C.F.R. §1.137(b)**

In the event that the examiner denies applicants' Request for Withdrawal of Notice of Abandonment Pursuant 37 C.F.R. §1.8(b), applicants submit this Alternative Petition to Revive an Unintentionally Abandoned Application under 37 C.F.R. §1.137(b). Pursuant to 37 C.F.R. §1.137(b), applicants have included herewith, in Exhibit A, a reply to the Notice entitled "TRANSMITTAL OF EXECUTED DECLARATION," (the "Response").

Applicants also hereby authorize the Commissioner to charge the petition fee due under 37 C.F.R. §1.17 for a small entity to deposit account number 13-2855. An assertion of small entity status is submitted herewith.

The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional.

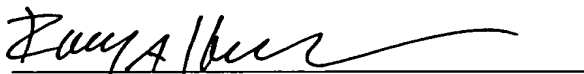
No terminal disclaimer is believed to be required.

The Commissioner is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith, or credit any overpayments, to deposit account number 13-2855.

For the foregoing reasons, applicants hereby alternatively petition that the Notice of Abandonment be withdrawn.

Respectfully submitted,

By:



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Reg. No. 37,641

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January 7, 2003